

Congress of the United States
Washington, DC 20515

February 10, 2016

The Honorable John Kerry
Secretary
U.S. Department of State
2201 C Street, N.W.
Washington, D.C. 20520

The Honorable Jacob J. Lew
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Avenue, N.W.
Washington, D.C. 20220

Dear Secretary Kerry and Secretary Lew:

It has come to our attention that the Office of Foreign Assets Control (OFAC) approved a license to allow Cubaexport, an entity wholly-owned by the Castro regime in Cuba, to renew an expired trademark registration for Havana Club rum. Cubaexport claims rights to the Havana Club registration through its confiscation, without compensation, of the Jose Arechabala Company (JASA). We are concerned about the implications of this decision for American intellectual property rights holders.

As you know, in 1997, OFAC revoked a prior license when Cubaexport attempted to transfer rights to the illegally obtained trademark to Pernod Ricard, its joint venture partner. Subsequently, OFAC denied a license to Cubaexport in 2006 when Cubaexport attempted to renew this illegally obtained trademark registration. Until this month, OFAC and the State Department have consistently followed long-standing U.S. and international policies and laws that protect rightful intellectual property owners from piracy. These policies also serve as a deterrent to those who seek to profit from uncompensated confiscations.

OFAC had previously based its decisions to deny or revoke the license to Cubaexport on the facts and conclusions that came out of years of litigation; primarily that Jose Arechabala, S.A. used the Havana Club name until the Cuban government expropriated its business in 1960 and that neither it, nor its successor, has ever consented to Cubaexport's or any of its partners' use of the Havana Club name. This most recent decision to grant a license to Cubaexport to renew an expired trademark places an illegally-obtained and expired trademark back in the hands of the regime that illegally confiscated it. Moreover, we are concerned that the effects of OFAC's granting such a license to the Cuban regime are not limited to Havana Club alone, and that this decision could undermine our national interests by diluting our nation's protections against the expropriation of American intellectual property by foreign governments.

We note that OFAC has also previously relied upon laws such as Section 211 in making its licensing decisions. The law states:

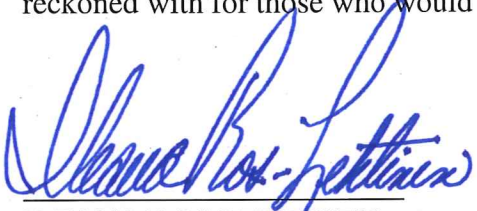
Notwithstanding any other provision of law, no transaction or payment shall be authorized or approved pursuant to Section 515.527 of title 31, Code of Federal Regulations, as in effect on September 9, 1998, with respect to a mark, trade name, or commercial name that is the same as or substantially similar to a mark, trade name, or commercial name that was used in connection with a business or assets that were confiscated unless the original owner of the mark, trade name, or commercial name, or the bona-fide successor-in-interest has expressly consented.

We believe that OFAC should not depart from precedent and should continue to apply Section 211 in rendering its licensing decisions. In accordance with Section 211, OFAC should determine: (a) whether the trademark that is the subject of the proposed renewal application is the same or similar to one that was used in connection with a business or assets that were confiscated, and (b) whether the renewal applicant has obtained the consent of the original owner of the stolen mark or the latter's bona fide successor-in-interest to register or renew that mark.

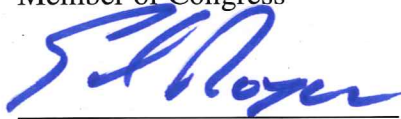
Further, we seek clarification as to why OFAC departed from precedent and declined to apply Section 211 to this most recent application for renewal of Cubaexport's license. In particular, we would appreciate it if you would shed light on how OFAC's approval of a license to allow Cubaexport to renew its expired trademark registration can be reconciled with Section 211, as well as with US policy norms that protect intellectual property rights holders against the effects of foreign confiscations.

Thank you for your attention to this important matter. We look forward to working with you to reinforce our nation's status as a champion for intellectual property rights holders, and a force to be reckoned with for those who would infringe upon their rights.

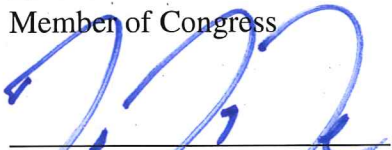
Sincerely,



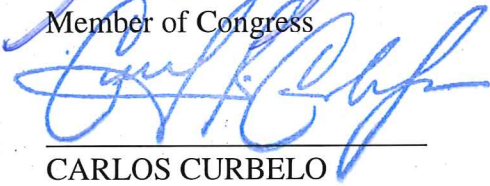
ILEANA ROS-LEHTINEN
Member of Congress



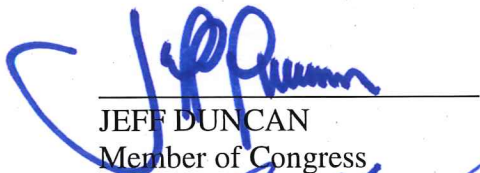
ED ROYCE
Member of Congress



MARIO DIAZ-BALART
Member of Congress



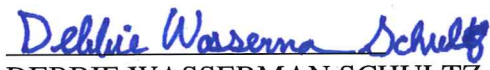
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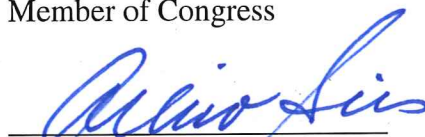
ELIOT ENGEL
Member of Congress



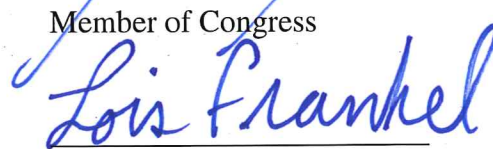
TED DEUTCH
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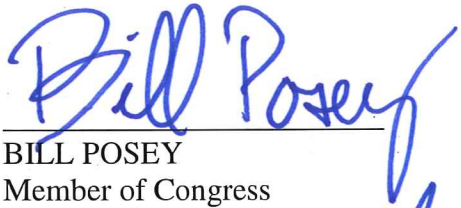
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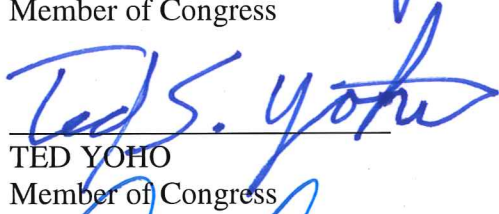


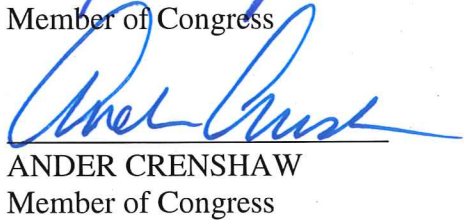
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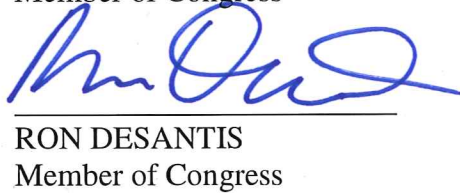
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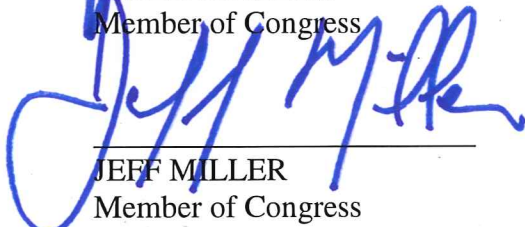

TED YOHO
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ANDER CRENSHAW
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GUS BILIRAKIS
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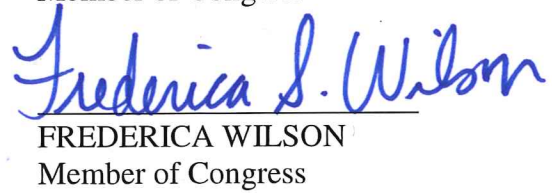

RON DESANTIS
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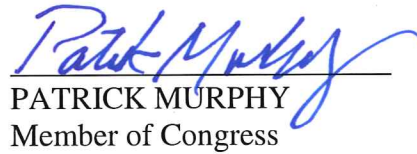

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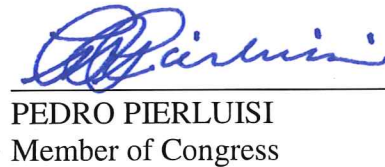

JEFF MILLER
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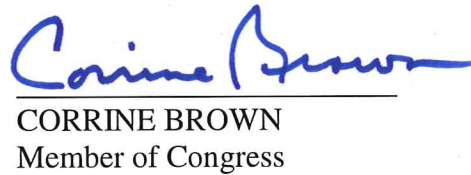

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